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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LEE DAVIDSON,
Petitioner,
vs.
DWIGHT NEVEN, *et al.*,
Respondents.

Case No. 2:14-cv-00432-JAD-PAL

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner.

Petitioner paid the \$5.00 filing fee for this action. (Doc. 1-1). The Court has reviewed the habeas petition, and it shall be served on respondents. Respondents shall file a response to the petition, as set forth at the conclusion of this order.

Petitioner has filed a motion to proceed *in forma pauperis*. (Doc. 3). Because petitioner has already paid the filing fee for this action, his motion to proceed *in forma pauperis* is denied as moot.

Petitioner has filed a motion for the appointment of counsel. (Doc. 2). Pursuant to 18 U.S.C. § 3006(a)(2)(B), the district court has discretion to appoint counsel when it determines that the “interests of justice” require representation. There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987);

1 *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally
 2 discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023
 3 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984).
 4 However, counsel must be appointed if the complexities of the case are such that denial of counsel
 5 would amount to a denial of due process, and where the petitioner is a person of such limited
 6 education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at 1196; *see also*
 7 *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). In this case, the petition on file is well-written
 8 and sufficiently clear in presenting the issues that petitioner wishes to bring. The issues in this case
 9 are not complex. Counsel is not justified in this instance. Petitioner's motion for the appointment
 10 of counsel is denied.

11 **IT IS THEREFORE ORDERED** that petitioner's motion to proceed *in forma pauperis*
 12 (Doc. 3) is **DENIED AS MOOT**.

13 **IT IS FURTHER ORDERED** that petitioner's motion for the appointment of counsel
 14 (Doc. 2) is **DENIED**.

15 **IT IS FURTHER ORDERED** that the Clerk **SHALL ELECTRONICALLY SERVE** the
 16 petition (Doc. 1) upon the respondents.

17 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from entry
 18 of this order within which to answer, or otherwise respond to, the petition. In their answer or other
 19 response, respondents shall address all claims presented in the petition. Respondents shall raise all
 20 potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and
 21 procedural default. **Successive motions to dismiss will not be entertained**. If an answer is filed,
 22 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in
 23 the United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have
 24 **forty-five (45) days** from the date of service of the answer to file a reply.

25 **IT IS FURTHER ORDERED** that any state court record exhibits filed by respondents
 26 shall be filed with a separate index of exhibits identifying the exhibits by number or letter. The
 27 hard copy of all state court record exhibits shall be forwarded, for this case, to the staff attorneys in
 28 the **Reno** Division of the Clerk of Court.

1 **IT IS FURTHER ORDERED** that from this point forward, petitioner shall serve upon the
2 Attorney General of the State of Nevada a copy of every pleading, motion, or other document he
3 submits for consideration by the Court. Petitioner shall include with the original paper submitted
4 for filing a certificate stating the date that a true and correct copy of the document was mailed to the
5 Attorney General. The Court may disregard any paper that does not include a certificate of service.
6 After respondents appear in this action, petitioner shall make such service upon the particular
7 Deputy Attorney General assigned to the case.

Dated: July 24, 2014.


Doreen L. Noyes